

OFFICE OF THE ATTORNEY GENERAL  
VICTIMS' RIGHTS IMPLEMENTATION PROJECT

**DEFINITION OF VICTIM**

The constitution of Arizona defines a victim as a person against whom the criminal offense (a violation of the state criminal statute) has been committed, or if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused. (Please note that most statutory rights USUALLY DO NOT apply if the perpetrator is a juvenile.)

**ARIZONA CONSTITUTIONAL RIGHTS FOR CRIME VICTIMS**

A victim of crime has a right:

1. To be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process.
2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
3. To be present at and, upon request, to be informed of all criminal proceedings when the defendant has the right to be present.
4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea and sentencing.
5. To refuse an interview, deposition or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
7. To read presentence reports relating to the crime against the victim when they are available to the defendant.
8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
9. To be heard at any proceeding when any post-convention release from confinement is being considered.
10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
12. To be informed of victims' constitutional rights.

In addition to those listed above, victims of crime may have rights under Arizona law and Court rule.

### **VICTIMS' RIGHTS BEFORE TRIAL**

You have the right to be notified, on request:

- of the date, time and place of court hearings involving the defendant;
- of the release or escape of the defendant from custody;

You have the right:

- to be told the name, address and phone number of the prosecutor's office handling the case;
- to be informed of victim assistance and other resources available to help you;
- to be told if a prosecutor decides NOT to proceed with a prosecution, and to be given the reasons for such a decision;
- to refuse a defense interview, and to set reasonable conditions for any such interview you choose to grant;
- to have the defendant, or any agent of the defendant, make contact with you through the prosecutor's office;
- to name a representative to exercise your rights if you are unable to do so;
- to be present throughout all criminal proceedings at which the defendant has the right to be present;
- to exercise your right to be heard through an oral, written or video/audio taped statement;
- to have your home address, employer's name and employer's address withheld from disclosure to the defendant and/or defendant's attorney;
- to be protected from unnecessary contact with the defendant, defendant's immediate family and defense witnesses;
- to confer with the prosecutor and be heard at any proceeding involving the release of the defendant from custody;
- to ask the court to revoke bond or personal recognizance release if the prosecution has not made such a request and there has been threats or harassment by, or on behalf of, the defendant;
- to be told of the defendant's release and any hearings to decide the defendant's eligibility for release, including release from a mental health treatment facility if the defendant was hospitalized by court order;
- to confer with the prosecutor before a change of plea and to be heard at any proceeding involving a plea

agreement;

- to contest a negotiated plea if reasonable efforts were NOT made to notify you beforehand; and,
- to confer with the prosecutor before trial.

### **VICTIMS' RIGHTS DURING TRIAL**

- to be present in the courtroom;
- to be accompanied by a support person of your choice, including a victim Witness Advocate, unless that person is a witness.

### **VICTIMS' RIGHTS DURING SENTENCING**

- to give the Presentence Investigator information about the emotional, physical and financial impact of the crime and your wishes for sentencing;
- to have a copy of the presentence report, upon request, when it is given to the defendant;
- to be heard at sentencing, and to give evidence at any aggravation, mitigation presentencing, or sentencing proceeding; and
- to have the court order the defendant to pay restitution for your economic losses directly related to the crime.

### **VICTIMS' RIGHTS AFTER SENTENCING**

You have the right, on request:

- to be notified of the sentence imposed by the court;
- to have any property taken in evidence, returned, or to be given an explanation for any refusal to return such property;
- to be notified of any hearing regarding work furlough release, home arrest, or any other post conviction hearing directly affecting the defendant;
- to be heard at any proceeding involving work furlough release or home arrest for the defendant;
- to be notified by the Board of Pardons and Paroles of a Parole Hearing, and to state your opinion about parole of the inmate;
- to be notified by the Department of Corrections of the release, escape, or death of the inmate;
- to be notified of any appeal of the defendant's conviction;
- to be notified of the release, including release of the defendant on work furlough, of the inmate from

jail;

- to be heard at any proceeding related to the discharge, modification, revocation, or termination of the defendant's probation;
- to contest any post conviction release, unless the defendant is discharged from sentence, when reasonable efforts were NCT made to allow you to be present and heard; and,
- to file a Restitution Lien against the defendant's property.

## **GENERAL DEFINITIONS OF HEARING AND PROCEEDINGS**

The following are basic definitions of hearings and proceedings that may occur during the course of a criminal prosecution. However, each case is unique and the court may combine issues needing to be addressed at any hearing. Please contact the person designated by the prosecutor's office handling the case in which you are involved if you have any questions.

**INITIAL APPEARANCE** - A proceeding held within 24 hours of arrest. The judge decides whether the defendant may be released on bond, his own recognizance, or otherwise, and sets bond if applicable. The judge may order the defendant not have contact with the victim, or set other conditions regarding the defendant's release. The judge may also appoint a lawyer to represent the defendant if he cannot afford to hire one.

**ARRAIGNMENT** - The defendant is informed of the formal charges and is required to enter a "plea" of guilty" or "not guilty". If the defendant pleads "not guilty" a pre-trial conference of trial will be scheduled within 60 days of the arraignment.

**PRELIMINARY HEARING** - A hearing scheduled within 20 days of the initial appearance to determine whether there is enough evidence (Probable Cause) to formally charge the defendant, and the crime or crimes which should be charged. The victim and other witnesses may be required to appear and testify.

**CHANGE OF PLEA** - A proceeding at which the court will be presented with a "plea agreement" by the prosecutor and the defendant's lawyer. The plea agreement may stipulate that the defendant pleads guilty to the original charges, or to such other charges as the prosecutor and the defendant's attorney have agreed upon. The actual terms and conditions of a Change of Plea may be very complex, and may include a stipulated sentence and/or restitution.

**DISMISSAL** - A dismissal of prosecution hearing usually involves a determination by the court as to whether the charges alleged in the indictment or information (complaint) should be dropped for good cause. If the prosecution is dismissed without prejudice, the charges can be re-filed.

**CONTINUANCE** - Delays are common at all stages of the criminal justice process. Continuances are legal postponements of scheduled proceedings and may occur without warning. Ask the contact person designated by the prosecutor in your case to explain any proceedings you do not understand, and follow the procedures, outlined by the prosecutor's office, to check for schedule changes in advance of any proceeding which you plan to attend.

**COMPETENCY/RULE 11** - A mental competency hearing usually involves determining whether the defendant is mentally competent to stand trial. The court could order that the defendant be civilly committed, released, or

stand trial as a competent defendant.

**MOTION TO SUPPRESS HEARING** - A motion to suppress hearing is usually held to determine whether or not evidence in a criminal case was illegally obtained. If the evidence was in violation of the defendant's fourth amendment (search and seizure), fifth amendment (privilege against self incrimination), or sixth amendment (right to assistance of counsel, etc.) rights, the judge will suppress (prevent) the evidence from being presented in the case.

**PRE-TRIAL CONFERENCE** - A pre-trial conference is usually a discussion between the attorneys and the court. Issues relating to the relevancy of facts, the gathering of evidence, and other matters pertinent to the case are discussed. The court could also make decisions relating to the defendant's release conditions, or other motions that could be raised on short notice.

**TRIAL** - This is a hearing before a judge (and, usually, a jury) at which evidence is presented by both the prosecutor and the defendant's attorney. The victim(s) and witnesses are subpoenaed (summoned) to testify, and the judge and/or jury decide whether there is enough evidence to prove the defendant guilty "beyond a reasonable doubt."

**AGGRAVATION/MITIGATION HEARING** - The court hears evidence and decides whether the defendant's sentence should be aggravated (increased) or mitigated (decreased). This hearing is often combined with the sentencing hearing; however, the court may take the testimony and other evidence under advisement and schedule a later date for sentencing.

**SENTENCING** - A sentencing is scheduled within 45 days after the defendant pleads guilty or is found guilty at trial. The victim has the right to be heard and to submit a statement at this time. The judge hears testimony regarding the need for restitution, the victim's and defendant's wishes regarding sentence, and reviews the presentence report prepared by the adult probation officer assigned to investigate the matter before rendering sentence.